



Waste Management of North America, Inc.  
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March 24, 1987

Program

Support Section  
Basilio Constantelos, Director  
Waste Management Division  
USEPA, Region V  
230 South Dearborn Street  
Chicago, IL 60604

RE: H.O.D. Expanded Site Inspection

Dear Mr. Constantelos:

The purpose of this letter is to set out in a single narrative the history of the United States Environmental Protection Agency (EPA) - Waste Management of Illinois (WMII) interchanges regarding CERCLA activity related to the H.O.D. Landfill, to set out our understanding of the serious issues raised by EPA and what its contractor(s) intend to do regarding H.O.D. and to suggest a future course of action regarding H.O.D.

In summary we believe that the issues raised by EPA's Expanded Site Inspection (ESI) are:

- 1) That the ESI is in essence a Remedial Investigation (RI);
- 2) That the ESI circumvents the settlement provisions of §122 of CERCLA as amended;
- 3) That the ESI does not conform to standards promulgated by EPA for studies of this kind.

It is our hope to negotiate with EPA a more appropriate study to determine whether a release or threat of a release exists at the H.O.D. facility and to undertake ourselves, a study pursuant to §122 of CERCLA.

#### BACKGROUND

The H.O.D. Landfill (H.O.D.) located in the village of Antioch ("Antioch"), Lake County Illinois is a closed solid waste landfill regulated by the State of Illinois. WMII is the operator of the facility and has provided over the years, in coordination with the Illinois Environmental Protection Agency (IEPA), a number of hydrogeological investigations and continues to maintain a number of groundwater monitoring wells which are monitored pursuant to Illinois regulatory requirements. WMII acknowledges the authority of IEPA to regulate H.O.D. and has no intention to abandon H.O.D. or otherwise evade Illinois authority.

In September 18, 1985, Federal Register, H.O.D. was proposed by EPA to the National Priorities List. The proposal of H.O.D. was based on an HRS scoring which was prepared by Ecology and Environment (E&E) pursuant to EPA contract, was reviewed by IEPA, reviewed by USEPA, Region V and submitted to Quality Assurance, Quality Control review by USEPA Headquarters and, in particular, reviewed by an EPA employee named David E. Egan. The HRS Documentation Log Sheet reflects a review inter alia of documents on H.O.D. as well as coordination and contact with the Village of Antioch. There is no indication of any contact with WMII notwithstanding the fact that WMII has the most sophisticated understanding of the site through its technical staff and its consultants and is ready, willing, and able to cooperate with EPA or its contractor regarding any hypothesized release or threat of release at the site.

As I advised EPA in recent telephone conversations WMII is in litigation with the Village of Antioch (Antioch) regarding H.O.D. This litigation was commenced by Antioch and essentially alleges that H.O.D. poses some endangerment to Antioch's water supply. Notwithstanding Antioch's allegations, WMII knows of no impact resulting from H.O.D. on Antioch's water supply.

On September 1, 1982, the IEPA analyzed Municipal Well No. 4 water for organic contamination. In a report dated December 20, 1982, J. Hurley of the IEPA stated that no halogenated volatile organics or organic compounds were detected in the extract of this sample.

Samples collected from all city wells in April 1985 and analyzed for volatile organics reported less than 1 ug/L.

After reviewing the EPA documents and in particular the HRS score sheet which formed the basis of the proposed listing of H.O.D. on the NPL, WMII submitted written comments on the score within the prescribed comment period and made an oral presentation to Russell Wyer and his staff in Washington. A copy of the letter from WMII with attachments is attached hereto. (Attachment) In summary our comments were based on a rigorous technical review of the HRS score sheet and data and established that the only factor upon which proposed NPL listing is based is a comment that the scorer observed a release of zinc in well G103, that well G103 was in fact an unreliable well in a condition of corrosion, that the well was made of galvanized metal containing zinc, that the observed release was no more than zinc corrosion and that, therefore, the site ought to be deleted from the proposed NPL.

Antioch also submitted comments on the proposed listing. Although Antioch could point to no data or other objective scientific indicia of a release or threat of a release, Antioch asked that H.O.D. be categorized as a site creating an imminent danger and that additional monitoring wells at different depths be drilled as soon as possible.

It bares repeating that IEPA analysis indicates no contamination of drinking water supplies emanating from H.O.D., nor is anyone else aware of any existing objective data which indicates a release or threat of a release.

In late January, 1987, I was contacted telephonically and was advised that EPA intended to do further analysis and sampling regarding H.O.D. It was my understanding that the scope of the investigation would be modest. I was advised that your contractor would be placing three wells on site, would be taking "some" soil samples and would be conducting sampling off-site.

I advised EPA of my client's desire to cooperate with EPA regarding a closer look at H.O.D. I reiterated that we are confident that H.O.D. could withstand a proper, closer look and offered to make available our technical personnel to discuss with your contractor and technical personnel what we know about the site and the hydrogeological setting of the area. I also asked EPA for whatever work agenda existed regarding what you intended to do at the site. I was advised that there was indeed a "work plan" (Work Plan) which was in draft form which WMII could not review since it was enforcement confidential. However, I was told that after WMII signed an access agreement allowing EPA onto the H.O.D. facility WMII would receive a copy of the Work Plan.

During the week of February 15, a copy of the Work Plan was delivered to a WMII technical representative. We again are unaware of any credible scientific evidence in the H.O.D. CERCLA docket which would establish a release or threat of a release from H.O.D. It is my understanding that EPA intended to reexamine the proposed listing of H.O.D. because WMII submitted evidence which fundamentally questions the basis for proposing H.O.D. to the NPL.

Among the objectives of the Work Plan as stated therein and as reiterated to me telephonically is to "expedite" a remedial investigation (RI) by doing much or all of the work required for an RI. As estimated by WMII technical staff based on our extensive experience in managing projects of this nature the cost for the E&E H.O.D. work plan (the "Work Plan") will be in the range of \$485,000 to \$560,000. This cost would be equal to the cost for an RI as indicated in 49 Federal Register 37081 (September 21, 1984) where EPA estimates the total average cost for an RI and Feasibility Study (FS) to be \$800,000.

By any objective view of the Work Plan, what EPA contemplates here is an RI, whatever other term might be used. By undertaking an RI at this stage of the game, EPA's actions raise two fundamental policy issues:

- 1) the H.O.D. RI fundamentally undermines the §122 settlement provisions of SARA since EPA did not offer to the PRP's, including WMII, an opportunity to undertake the work themselves.

- 2) By embarking on an RI disguised as an ESI, EPA fails to conform to its own standards promulgated by it pursuant to CERCLA for the conduct of such a study.

- 1) The ESI Is An RI

The Work Plan prepared by USEPA's FIT contractor, bears a striking resemblance to the model scope of work for a RI. The basis for WMII's position that the Work Plan is a disguised RI is cumulative and overwhelming. The most significant facts supporting this view are:

- The goals of the Work Plan, as stated on pages 3-1 and 3-2, are to determine the "extent of subsurface soil" and "evaluate the level and extent of groundwater contamination." The NCP defines a RI as an activity which is "...undertaken to determine the nature and extent of the problem presented by the release" (40 CFR §300.6). Conversely, the NCP does not make any provisions for determining the extent of the problem during the Site Evaluation phase which is conducted prior to NPL listing (40 CFR §300.66).
- EPA has asserted that the results of the Work Plan will be incorporated in the final RI and, theoretically, little or no further work will be necessary to complete the RI.
- The scope of the Work Plan can only be compared to an RI. We estimate that the RI will cost between \$485,000 and \$560,000. This estimate is based on estimated subcontractor labor rates of \$40 per hour, analytical laboratory rates of \$1,500-1,800 per sample (including bottle preparation, shipping and quality assurance validation), and the direct expenses as stated in the Work Plan. This cost estimate only addresses the contractor expenses and not the USEPA's oversight cost. Currently, the EPA budgets \$880,000 for a typical Remedial Investigation and Feasibility Study. Since the RI generally consumes 70-80 percent of a total RI/FS budget (i.e., \$560,000-\$640,000), it is fair to state that the data gathering level of effort described in the Work Plan is equivalent to that of a typical RI. The remaining difference between the estimated cost of the Work Plan and that of a typical RI can be attributed to the interpretative analysis tasks which are not included in the H.O.D. investigation plan.
- The nature of the Work Plan is strikingly similar to an RI in terms of the number of samples and types of sampling contemplated.

The foregoing facts raise definitional issues which are both in EPA's and WMII's interests to resolve. These issues include the scope, objectives and methodology of an ESI.

2) Undermining of §122(a) of SARA

§122(a) of SARA provides as follows:

The President, in his discretion, may enter into an agreement with any person (including the owner or operator of the facility from which a release or substantial threat of release emanates, or any other potentially responsible person), to perform any response action (including any action described in section 9604(b)) if the President determines that such action will be done properly by such person. Whenever practicable and in the public interest, as determined by the President, the President shall act to facilitate agreements under this section that are in the public interest and consistent with the National Contingency Plan in order to expedite effective remedial actions and minimize litigation. If the President decides not to use the procedures in this section, the President shall notify in writing potentially responsible parties at the facility of such decision and the reasons why use of the procedures is inappropriate. A decision of the President to use or not to use the procedures in this section is not subject to judicial review.

It is WMII's position, considering the nature and extent of the Work Plan, that it has not been offered an opportunity to undertake this effort as required by §122(a) nor has EPA given notice as to why the procedures set out in §122 as a whole are inappropriate despite telephonic inquiries by WMII.

Let me reiterate here that WMII is ready, willing and able to enter into an agreement to undertake a study at the H.O.D. facility which is consistent with appropriate EPA guidance. Without such involvement in this study, WMII believes it will be foreclosed from meaningful participation in the entire CERCLA process and will have been deprived of the recognized benefits which SARA provides to cooperating parties.\*

It is WMII's position that it is in both its interests and the interests of EPA that WMII undertake an appropriate study because such an endeavor will likely be more cost effective than EPA's contractor's efforts, will expedite its accomplishment by avoiding existing EPA program and contractor backlogs, and will avoid or minimize litigation.

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\*In this regard, it was worth noting that Gene Lucero, the senior EPA CERCLA enforcement official has stated: "If you are not involved in the RI/FS, you're dead. If you, wait to make comments on a remedy, until the public comment period, you'll have no special consideration." BNA, Toxic Law Report, Vol.1, No. 32, January 27, 1987.

### 3) The Work Plan Violates EPA Standards

The technical staff of the WMII's Environmental Management Department thoroughly reviewed the Work Plan and identified numerous technical and procedural deficiencies. Since it has been established that the H.O.D. ESI is functionally equivalent to RI data gathering activities, the criteria set forth in the USEPA's Guidance on Remedial Investigations under CERCLA have been utilized as the basis for WMI's review. The deficiencies which were identified as a result of this review include, but are not limited to, the following issues:

- The stated objectives of the proposed study are so general and nebulous that there is no way to determine if the scope of work meets the "necessary and sufficient" criteria mandated by CERCLA and the NCP. Specifically, no technical justification is provided for the number and location of monitor wells which are proposed. Furthermore, the Sampling Plan proposed to be developed as part of Subtask 1.3 does not indicate that such justification will be provided. WMI believes that the final monitor well placement rationale should consider the existing water level data which suggests that inward hydraulic gradients prevail in the area of the H.O.D. facility.
- The FIT contractor assumes that the soils around the landfill are contaminated, or have a high probability for becoming contaminated. Given that the boundaries of the fill area are well defined, and that the disposal activities have been confined to within these boundaries, there is no technical rationale for a perimeter soil sampling and analysis program.

The soil sampling contemplated here will not reasonably provide technically reliable information regarding pathways of migration from H.O.D. nor will it yield information which will reasonably establish that a release or threat of a release exists at H.O.D.

- Throughout the Work Plan document, references are made to the "area" and the "site," yet no map is provided which depicts the limit of the Work Plan study area. The establishment of study area boundaries is an EPA-guidance mandated requirement for all RIs.
- The methodologies to be employed during the geophysical investigations are not specified. There currently exist no geophysical methods which can distinguish an anomaly associated with a contaminant plume from the background variability inherent with glacial till deposits.
- Galvanized well points are proposed for installation in the Sequoit Creek streambed. WMII concurs that well points at this location would be useful in defining the potentiometric relationships in the area. However, in light of the work WMII

has conducted at H.O.D. demonstrating that galvanized wells in this environment will yield anomalous zinc concentrations (see letter dated November 19, 1985, to Mr. Russel Wyer, Director of Hazardous Site Control Division from Messrs. Rohr and Homsy of WMII), we would advise either that these points not be sampled for water quality parameters or that the piezometers be constructed of non-galvanized material.

- The plan states that approximately 1,025 feet of soil boring will be required for monitor well installation; yet of 2,040 feet of PVC and stainless steel casing and screen materials are also specified. This suggests that the FIT contractor is contemplating multiple well completions in a single borehole. This practice is not an accepted procedure in the groundwater monitoring industry.

The National Contingency Plan does provide for limited site investigation activities prior to final NPL rule making, which focus on validating or refuting the preliminary HRS score. Clearly, this can be accomplished without wasting valuable resources on the installation of 22 monitor wells and the analysis of 175 samples. WMII's technical staff believes that the installation of 4-6 stratigraphic borings and piezometers, 2-3 additional monitor wells, and resampling of all new and existing monitor wells would provide the necessary data to determine if there was an observed release or the potential for such a release.

#### Suggested Future Course of Action

Through inquiries both in Region V and in Headquarters, WMII has learned that EPA has yet to develop a guidance on what an ESI should accomplish or what its scope should be. We suggest that Region V take the following steps to assure clarification of the ESI program in general and resolve the issues raised by the Work Plan and this letter in particular.

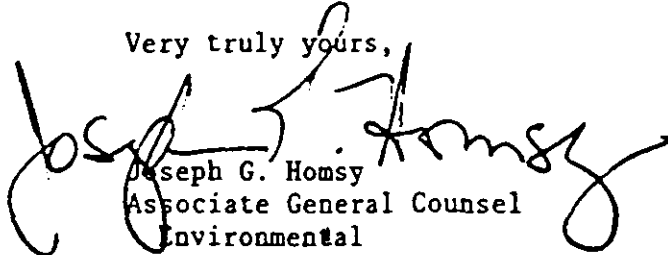
To begin, we request that Region V cease all activity on the Work Plan for a period of sixty days until the policy issues raised by this letter are resolved.

Secondly, we request that we meet as soon as possible with you and your staff to discuss how the scope and definitional issues raised by the ESI might be resolved.

Thirdly, we respectfully request that whatever the resolution of the scope and definitional issues, WMII be permitted to undertake at its own expense whatever appropriate response activities are required by an ESI as provided for by §122 of CERCLA.

WMI stands ready willing and able to discuss this letter at your earliest opportunity. We are hopeful that the issues raised herein can be resolved in a cooperative spirit.

Very truly yours,



Joseph G. Homsy  
Associate General Counsel  
Environmental

JGH:tkd

Attachments

cc: Chip Landman  
Bill Schaeffer  
Gene Lucero  
Henry Longest